

AMENDED IN ASSEMBLY AUGUST 20, 2013

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 516

**Introduced by Senator Steinberg
(Coauthors: Senators Leno and Lieu)**

February 21, 2013

An act to amend Sections 9998.1, 9998.6, and 9998.8 of, to add Sections 9998.1.5, 9998.2.5, 9998.10, and 9998.11 to, and to repeal and add Section 9998.2 of, the Business and Professions Code, relating to foreign labor contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 516, as amended, Steinberg. Foreign labor contractors: registration.

Existing federal law permits certain aliens to engage in employment in the United States under specified conditions. Existing state law regulates the services of foreign labor contractors, as defined, with regard to contracts, recruitment procedures and representations, and information as to terms and conditions of employment. Existing law provides that any person who violates the latter provisions is guilty of a misdemeanor. Existing law also permits any person aggrieved by a violation of these provisions to bring an action for injunctive relief or damages, or both, and authorizes recovery of damages, costs, and reasonable attorney's fees, in an amount not less than \$500, if the aggrieved person prevails on the action.

Under existing state law, the Division of Labor Standards Enforcement in the Department of Industrial Relations, under the direction of the Labor Commissioner, enforces and administers the licensing and supervision of farm labor contractors, as defined.

This bill would *change the definition of a foreign labor contractor to mean a person who performs foreign labor contracting activity, as defined, and would* require a foreign labor contractor to register with the Labor Commissioner and pay a specified fee, upon satisfying specified conditions. The bill would require the commissioner to enforce and administer the registration and supervision of foreign labor contractors. The bill would prohibit a person from *knowingly* entering into an agreement for the services of a foreign labor contractor that is not registered with the commissioner. The bill would also require foreign labor contractors to disclose specified information and deposit with the commissioner a surety bond in a specified amount, for payment of any amount adjudicated against the foreign labor contractor, as a condition of registration, as specified. The bill would further require persons using the services of foreign labor contractors to obtain foreign workers to disclose specified information ~~and deposit with the commissioner a surety bond in a specified amount, for payment of any amount adjudicated against that person, as specified~~ *to the commissioner*.

The bill would require a foreign labor contractor to disclose in writing to each foreign worker who is recruited for employment certain information, as specified. The bill would prohibit a foreign labor contractor and its agent from assessing a fee or cost to a foreign worker ~~for employment services, as defined~~ *foreign labor contracting activities*. The bill would also prohibit charging a foreign worker with any costs or expenses not customarily assessed against similarly situated workers, and would limit the amount of housing costs charged to the foreign worker to the market rate for similar housing. The bill would prohibit requiring a foreign worker to pay any costs or expenses prior to commencement of work. The bill would prohibit additional requirements or changes to the terms of the contract originally signed by the foreign worker, unless the foreign worker is provided at least 48 hours to review and consider the additional requirements or changes, and would require the specific consent of the foreign worker, as provided, to each additional requirement or change.

The bill would authorize a civil penalty for violations of these provisions, ~~and~~ would authorize the commissioner or a person aggrieved by a violation of these provisions to bring an action for injunctive relief

or damages, or both, and would authorize recovery of damages, costs, and reasonable attorney's fees, as specified, including enforcement of liability against the ~~bonds~~ *bond* deposited with the commissioner. The bill would provide for the joint and several liability of foreign labor contractors and persons using the foreign labor contractors' services *if specified conditions are met*. The bill would further authorize a person who, upon information and belief, claims a violation of these provisions has been committed to bring a civil action for injunctive relief on behalf of the general public and, upon prevailing, recover reasonable attorney's fees and costs. Because this bill would expand the scope of the provisions regulating foreign labor contractors, a violation of which is a misdemeanor, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Foreign labor contractors are increasingly relied upon to
- 4 facilitate the movement of labor from one country to another.
- 5 California is the leading destination state in the United States for
- 6 temporary foreign workers. As of January 2011, there were 130,000
- 7 temporary foreign workers in California.
- 8 (b) While many foreign labor contractors behave ethically and
- 9 are engaged in lawful conduct, some foreign labor contractors are
- 10 often complicit with, or are directly involved in, the illegal
- 11 trafficking of foreign workers.
- 12 (c) Unscrupulous foreign labor contractors often charge
- 13 exorbitant fees for their services, force foreign workers into debt
- 14 bondage, falsify documents, and deceive foreign workers about
- 15 the terms and conditions of work, thereby increasing their
- 16 vulnerability to human trafficking.
- 17 (d) The incidence of known human trafficking cases involving
- 18 foreign labor recruiters is increasing dramatically in the United

1 States. Stricter regulation of foreign labor contractors will ensure
2 the integrity of the Californian economy, which is undermined
3 when unregulated persons conspire to fraudulently deceive foreign
4 workers about the terms and conditions of work.

5 (e) California already regulates farm labor contractors through
6 a comprehensive licensing system and provides some oversight
7 of the activities of foreign labor contractors. This bill expands
8 regulation of the activities of foreign labor contractors by the
9 following:

10 (1) Requiring foreign labor contractors to register with the
11 appropriate state agency.

12 (2) Requiring disclosure of the use of foreign labor contractors,
13 and their agents, by persons seeking to employ foreign workers.

14 (3) Imposing penalties on a person using an unregistered foreign
15 labor contractor to obtain foreign workers or employees.

16 (4) Expanding the remedies available to foreign workers
17 aggrieved by the actions of foreign labor contractors and those
18 acting in concert with them.

19 SEC. 2. Section 9998.1 of the Business and Professions Code
20 is amended to read:

21 9998.1. The following definitions are applicable to this chapter:

22 (a) "Person" includes any natural person, company, firm,
23 partnership or joint venture, association, corporation, limited
24 liability company, or sole proprietorship.

25 ~~(b) "Compensation" means all forms of remuneration or~~
26 ~~consideration for the provision of employment services to foreign~~
27 ~~workers by a foreign labor contractor.~~

28 ~~(c) "Employment services" includes, but is not limited to,~~
29 ~~procuring employment, marketing labor, processing visa~~
30 ~~applications, or otherwise arranging the employment or~~
31 ~~transportation, housing, and other living accommodations for~~
32 ~~foreign workers either on behalf of those foreign workers or on~~
33 ~~behalf of another person, including services performed outside the~~
34 ~~United States. "Employment services" does~~

35 *(b) "Foreign labor contracting activity" means recruiting,*
36 *soliciting, or related activities with respect to a foreign worker*
37 *who resides outside of the United States in furtherance of that*
38 *worker's employment in California, including when that activity*
39 *occurs wholly outside the United States. "Foreign labor*
40 *contracting activity" does not include the services of an employer,*

or employee of an employer, if those services are provided directly to foreign workers solely to find workers for the employer's own use, and are provided without the participation of any foreign labor contractor.

(d)

(c) "Foreign worker" means any person seeking employment who is not a United States citizen *or permanent resident* but who is authorized by the federal government to work in the United States, including a person who engages in temporary nonagricultural labor pursuant to Section 101(a)(15)(H)(ii)(b) of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101(a)(15)(H)(ii)(b)).

(e)

(d) "Foreign labor contractor" means any person ~~who for compensation agrees to assist in securing or who actually secures for or provides employment services to foreign workers who performs foreign labor contracting activity, including any person who performs foreign labor contracting activity wholly outside the United States, except that the term does not include any entity of federal, state, or local government.~~ "Foreign labor contractor" does not include a person licensed by the Labor Commissioner as a talent agency under Chapter 4 (commencing with Section 1700) of Part 6 of Division 2 of the Labor Code.

SEC. 3. Section 9998.1.5 is added to the Business and Professions Code, to read:

9998.1.5. (a) On and after July 1, 2015, a person acting as a foreign labor contractor shall register with the Labor Commissioner in accordance with the terms and procedures for registration established by the commissioner by January 1, 2015. On and after August 1, 2015, the commissioner shall post on its Internet Web site the names and contact information for all registered foreign labor contractors and a list of the names and contact information for any foreign labor contractors denied renewal or registration.

(b) The Labor Commissioner may not register a person to act as a foreign labor contractor, and may not renew a registration, until all of the following conditions are satisfied:

(1) The person has executed a written application in a form prescribed by the commissioner, subscribed and sworn to by the person, and containing all of the following:

1 (A) A statement by the person of all facts required by the
2 commissioner concerning the applicant's character, competency,
3 responsibility, and the manner and means by which the person
4 proposes to conduct operations as a foreign labor contractor if
5 registered.

6 (B) The names and addresses of all persons, except bona fide
7 employees on stated salaries, financially interested, either as
8 partners, associates, or profit sharers, in the proposed operation as
9 a foreign labor contractor, together with the amount of their
10 respective interests.

11 (C) A declaration consenting to the designation by a court or
12 the commissioner as an agent available to accept service of
13 summons in any action against the registrant, if the registrant has
14 left the jurisdiction in which the action is commenced or otherwise
15 has become unavailable to accept service.

16 (2) The commissioner, after investigation, is satisfied as to the
17 character, competency, and responsibility of the person.

18 (3) (A) The person has deposited with the commissioner a
19 surety bond in an amount based on the size of the person's annual
20 gross receipts from operations as a foreign labor contractor, as
21 follows:

22 (i) For gross receipts up to five hundred thousand dollars
23 (\$500,000), a ~~twenty-five-thousand-dollar (\$25,000)~~
24 *fifty-thousand-dollar (\$50,000)* bond.

25 (ii) For gross receipts of five hundred thousand dollars
26 (\$500,000) to two million dollars (\$2,000,000), a
27 ~~fifty-thousand-dollar (\$50,000)~~ *one-hundred-thousand-dollar*
28 *(\$100,000)* bond.

29 (iii) For gross receipts greater than two million dollars
30 (\$2,000,000), a ~~seventy-five-thousand-dollar (\$75,000)~~
31 *one-hundred-fifty-thousand-dollar (\$150,000)* bond.

32 (B) If the foreign labor contractor has been the subject of a final
33 judgment in a year in an amount equal to that of the bond required,
34 that contractor shall be required to deposit an additional bond
35 within 60 days. The bond shall be payable to the people of the
36 State of California and shall be conditioned on the foreign labor
37 contractor complying with all the terms and provisions of this
38 chapter and paying all damages occasioned to any person by failure
39 to do so, or by any violation of this chapter, or false statements or
40 misrepresentations made in the registration process. The bond shall

1 also be payable for interest on wages and for any damages arising
2 from violation of applicable orders of the Industrial Welfare
3 Commission, and for any other monetary relief awarded to a
4 foreign worker as a result of a violation of law by the foreign labor
5 contractor.

6 (4) The person has paid to the commissioner a registration fee
7 of five hundred dollars (\$500) plus a filing fee of ten dollars (\$10).

8 (c) The commissioner may not register a person as a foreign
9 labor contractor, if the person was found by a court, the Secretary
10 of Labor, or the commissioner to have violated any of the following
11 provisions:

12 (1) The federal Trafficking Victims Protection Act of 2000
13 (Division A, Public Law 106-386), as amended.

14 (2) Sections 1682 to 1699, inclusive, of the Labor Code.

15 (3) Section 236.1 of the Penal Code.

16 (4) An applicable guest worker program.

17 SEC. 4. Section 9998.2 of the Business and Professions Code
18 is repealed.

19 SEC. 5. Section 9998.2 is added to the Business and Professions
20 Code, to read:

21 9998.2. (a) On and after July 1, 2015, a person using the
22 services of a foreign labor contractor to procure foreign workers
23 or employees *pursuant to subdivision (b) of Section 9998.1* shall
24 disclose this information to the Labor Commissioner in accordance
25 with the terms and procedures established by the commissioner
26 by January 1, 2015.

27 (b) The disclosure shall include, but is not limited to, the
28 following:

29 ~~(1) The names and addresses of all persons, except bona fide~~
30 ~~employees on stated salaries, financially interested, either as~~
31 ~~partners, associates, or profit sharers, in the person's business~~
32 ~~enterprise, together with the amount of their respective interests.~~

33 *(1) The name, address, and contact information of the person*
34 *designated by the employer to work with a foreign labor contractor.*

35 (2) A declaration consenting to the designation by a court of
36 the commissioner as an agent available to accept service of
37 summons in any action against the person, if the person has left
38 the jurisdiction in which the action is commenced or otherwise
39 has become unavailable to accept service.

~~(3) A copy of the foreign labor contractor's disclosure as required under Section 9998.2.5 to all foreign workers or employees obtained by the person through the services of the foreign labor contractor or its agents.~~

~~(4) Information about the steps the person has taken to verify the accuracy of the information provided in the foreign labor contractor's disclosure under Section 9998.2.5 and submitted under paragraph (3).~~

(c) A person may not knowingly enter into an agreement for the services of a foreign labor contractor that is not registered under this chapter.

~~(d) (1) A person using or anticipating using the services of a foreign labor contractor to obtain workers or employees shall deposit with the commissioner a surety bond in an amount based on the size of the person's annual payroll for all employees, as follows:~~

~~(A) For payrolls up to five hundred thousand dollars (\$500,000), a twenty-five-thousand-dollar (\$25,000) bond.~~

~~(B) For payrolls of five hundred thousand dollars (\$500,000) to two million dollars (\$2,000,000), a fifty-thousand-dollar (\$50,000) bond.~~

~~(C) For payrolls greater than two million dollars (\$2,000,000), a seventy-five-thousand-dollar (\$75,000) bond.~~

~~(2) If the person has been the subject of a final judgment in a year in an amount equal to that of the bond required, that person shall be required to deposit an additional bond within 60 days. The bond shall be payable to the people of the State of California and shall be conditioned on the person complying with all the terms and provisions of this chapter and paying all damages occasioned to any person by failure to do so, or by any violation of this chapter, or false statements or misrepresentations made in complying with this section. The bond shall also be payable for interest on wages and for any damages arising from violation of applicable orders of the Industrial Welfare Commission, and for any other monetary relief awarded to a foreign worker as a result of a violation of law by the person.~~

SEC. 6. Section 9998.2.5 is added to the Business and Professions Code, to read:

9998.2.5. (a) A foreign labor contractor shall ascertain and disclose in writing to each foreign worker who is recruited for

1 employment in English and in the primary language of the foreign
2 worker being recruited, at the time of the foreign worker's
3 recruitment, the following information:

4 (1) The identity of the employer and the identity of the person
5 conducting the recruiting on behalf of the employer, including any
6 subcontractor or agent involved in the recruiting.

7 (2) A signed copy of the work contract, including all assurances
8 and terms and conditions of employment, from the prospective
9 employer for whom the foreign worker is being recruited, including
10 the compensation to be paid, the place and period of employment,
11 a description of the type and nature of employment activities, any
12 withholdings or deductions from compensation, and any penalties
13 for terminating employment.

14 (3) The type of visa under which the foreign worker is to be
15 employed, the length of time the visa is valid, and the terms and
16 conditions under which the visa will be renewed with a clear
17 statement of whether the employer will secure renewal of the visa
18 or if renewal must be obtained by the foreign worker, and any
19 expenses associated with securing or renewing the visa.

20 (4) An itemized list of any costs or expenses to be charged to
21 the foreign worker, including, but not limited to, the costs of
22 housing or accommodation, transportation to and from the worksite,
23 meals, medical examinations, health care or safety equipment
24 costs, and any other costs, expenses, or deductions to be charged
25 the foreign worker.

26 (5) A statement, in a form specified by the Labor Commissioner,
27 that does each of the following:

28 (A) States that no foreign labor contractor, or agent or employee
29 of a foreign labor contractor, can lawfully assess any fee, including
30 visa fees, processing fees, transportation fees, legal expenses,
31 placement fees, and other costs to a foreign worker for ~~employment~~
32 ~~services~~ *foreign labor contracting activities*, and that the employer
33 may bear the costs or fees for the foreign labor contractor, but that
34 these fees cannot be assessed to the foreign worker.

35 (B) Explains that no additional requirements or changes may
36 be made to the terms of the contract originally signed by the foreign
37 worker, unless the foreign worker is provided at least 48 hours to
38 review and consider the additional requirements or changes and
39 the foreign worker gives specific consent, voluntarily and without
40 threat of penalty, to each additional requirement or change.

(C) Describes the protections afforded the foreign worker by this chapter and by the federal Trafficking Victims Protection Act of 2000 (Division A, Public Law 106-386), as amended, and any applicable guest worker program, including relevant information about the procedure for filing a complaint under this chapter, and the telephone number for the national human trafficking resource center hotline.

(6) Any education or training to be provided or required, including the nature, timing, and cost of training and the person who will pay training costs, whether the training is a condition of employment, continued employment, or future employment, and whether the foreign worker will be paid or remunerated during the training period, including the rate of pay or remuneration.

(7) Any other information that the commissioner may require by regulation.

(b) The foreign labor contractor shall file the disclosure required under subdivision (a) with the Labor Commissioner within 72 hours of providing it to the foreign worker.

~~(b)~~

(c) A foreign labor contractor, or the agent, subcontractor, or employee of a foreign labor contractor, or a person using the services of a foreign labor contractor to obtain foreign workers or employees, may not assess any fee, including, but not limited to, visa fees, processing fees, transportation fees, legal expenses, placement fees, and other costs, to a foreign worker for employment services foreign labor contracting activities.

~~(c)~~

(d) A foreign worker may not be required to pay any costs or expenses that are not customarily assessed against all workers similarly employed in the United States. No costs or expenses shall be required to be paid by the foreign worker prior to the commencement of work. The amount charged for providing housing to the foreign worker shall be limited to market rate for similar housing.

~~(d)~~

(e) Additional requirements or changes shall not be made to the terms of the contract originally signed by the foreign worker, unless the foreign worker is provided at least 48 hours to review and consider the additional requirements or changes and the foreign

1 worker gives specific consent, voluntarily and without threat of
2 penalty, to each additional requirement or change.

3 SEC. 7. Section 9998.6 of the Business and Professions Code
4 is amended to read:

5 9998.6. A person may not intimidate, threaten, restrain, coerce,
6 discharge, or in any manner discriminate against a foreign worker
7 or a member of his or her family in retaliation for the foreign
8 worker's exercise of any right under this chapter.

9 SEC. 8. Section 9998.8 of the Business and Professions Code
10 is amended to read:

11 9998.8. (a) A person who violates this chapter or who causes
12 or induces another to violate this chapter is guilty of a misdemeanor
13 punishable by a fine of not more than one thousand dollars
14 (\$1,000), or imprisonment in the county jail for not more than six
15 months, or both. *An employer shall be not liable under this*
16 *subdivision if the employer only used services provided by a foreign*
17 *labor contractor registered with the Labor Commissioner pursuant*
18 *to Section 9998.1.5.*

19 (b) A person who violates any provision of this chapter shall
20 be subject to a civil penalty of no less than one thousand dollars
21 (\$1,000) and no more than twenty-five thousand dollars (\$25,000)
22 per violation, in addition to any other civil remedies available to
23 the Labor Commissioner or an aggrieved person.

24 (c) The commissioner or a person aggrieved by a violation of
25 this chapter may do all of the following:

26 (1) Bring an action for injunctive relief against a person who
27 violates this chapter and, upon prevailing, recover costs and
28 reasonable attorney's fees.

29 (2) Bring an action for damages, against a person who violates
30 this chapter to recover the greater of all of his or her actual damages
31 or five hundred dollars (\$500) per employee per violation for an
32 initial violation, and one thousand dollars (\$1,000) per employee
33 for each subsequent violation, and, upon prevailing in an action
34 brought pursuant to this section, recover costs and reasonable
35 attorney's fees.

36 (3) Enforce the liability on the bonds required under Section
37 9998.1.5 or 9998.2.

38 ~~(d) Foreign labor contractors and those persons using their~~
39 ~~services to obtain foreign workers or employees are jointly and~~
40 ~~severally liable for violations of this chapter.~~

1 (d) (1) *A person using the services of a foreign labor contractor*
2 *is jointly and severally liable for any violation of this chapter by*
3 *a foreign labor contractor unless both of the following are true:*

4 (A) *The person only used services provided by a foreign labor*
5 *contractor registered with the Labor Commissioner pursuant to*
6 *Section 9998.1.5.*

7 (B) *The person has made a good faith effort to ensure*
8 *compliance of this chapter by the foreign labor contractor.*

9 (2) *For purposes of this subdivision, “good faith effort” means*
10 *all reasonable and feasible efforts by the person using the services*
11 *of the foreign labor contractor to ensure the foreign labor*
12 *contractor has not committed any violations of this chapter. An*
13 *evaluation of a person’s good faith effort may include, but is not*
14 *limited to, the following factors:*

15 (A) *The extent to which the person has informed the foreign*
16 *labor contractor of its obligations and liabilities under this chapter.*

17 (B) *The extent to which the person has periodically reviewed*
18 *the foreign labor contractor’s recruiting and contracting practices,*
19 *including reports by foreign workers of practices that may violate*
20 *this chapter.*

21 (C) *Whether the person has obtained and reviewed copies of*
22 *disclosure statements or other documentation required to be*
23 *provided by the foreign labor contractor to the foreign worker by*
24 *this chapter.*

25 (e) *Nothing in this section shall be construed to preempt or alter*
26 *any other rights or remedies, including any causes of action,*
27 *available under any other federal or state law.*

28 SEC. 9. *Section 9998.10 is added to the Business and*
29 *Professions Code, to read:*

30 9998.10. *The Labor Commissioner and the deputies and*
31 *representatives authorized by the commissioner in writing may*
32 *take assignments of actions on the bonds required under Section*
33 *9998.1.5 or 9998.2 by aggrieved persons and may prosecute the*
34 *actions on behalf of persons who, in the judgment of the*
35 *commissioner, are financially unable to employ counsel, in the*
36 *same manner that claims are prosecuted under Section 98 of the*
37 *Labor Code.*

38 SEC. 10. *Section 9998.11 is added to the Business and*
39 *Professions Code, to read:*

1 9998.11. A person who, upon information and belief, claims
2 a violation of this chapter has been committed may bring a civil
3 action for injunctive relief on behalf of the general public and,
4 upon prevailing, shall recover reasonable attorney's fees and costs.

5 SEC. 11. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.